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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937.

No. 11

UNITED STATES OF AMERICA,
Petitioner,

vs.

ANGIE CROOK WILLIAMS,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR REHEARING.

FRANK C. WADE,
PERRY SMITH,
Attorneys for Respondent.

THE GUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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PETITION FOR REHEARING.

The United States may require the services of its citizens in its army or navy regardless of age on any terms it may designate, but when such services are required it is bound by the terms of agreement the same as the individual citizen.

There is a law making it necessary to secure the consent of parents or guardian before a minor under the age of eighteen may be enlisted in the United States Navy, which consent when approved and accepted becomes a contract or covenant with said parents or guardian. The parent must release all control of said minor and in return therefor the Government may make any reasonable contract not prohibited by law. When these requirements are met the contract is valid and binding on all parties thereto.

At the time of his enlistment, the insured, a minor under the age of eighteen, in consideration of his parents giving

their necessary consent, and on conditions prescribed by the Secretary of Navy, that it continue during his *minority*, made an allotment of a part of his pay to pay the monthly premiums as they became due. This is in harmony with the scheme of government insurance, was not prohibited by nor in violation of any law and was permissible and provided for in Section 202 of the War Risk Insurance Act.

After the parents executed the consent providing for the continuance of the insurance during minority, under authority of Section 202 of the War Risk Insurance Act, the Secretary of Navy accepted the allotment of a part of insured's pay, under conditions prescribed by him that it would continue during insured's *minority* enlistment. This is permitted and impliedly provided for in said Section 202.

> "That the enlisted man may allot any proportion or proportions or any fixed amount or amounts of his monthly pay or of the proportion thereof remaining after the compulsory allotment, for such purposes and for the benefit of such person or persons as he may direct, *subject, however, to such conditions and limitations as may be prescribed under regulations to be made by the Secretary of War and the Secretary of the Navy, respectively.*" Section 202 of the War Risk Insurance Act. (Our italics.)

The consent, the allotment by the insured and the acceptance thereof by the Secretary of Navy and the Veterans' Administration became a part of the contract of insurance just as definitely as if all had been reduced to writing in one contract and signed by all parties.

The controlling issue in this case is whether such an agreement is within the scope of the authority of the Secretary of Navy and binding on the United States. Since 1924, in determining the liability of the Government, this Court has held that "The court should not affirm what is clearly an unjust and inequitable result unless under plain compulsion of law." *U. S.* v. *The Thekla-post.*

The statute under which plaintiff's son was accepted is a determination by Congress that minors over 14 and under 18 have capacity to make contracts for service in the Navy, *only* by and with the consent of their parents or guardians. This consent was an unconditional release and after its execution could not be repudiated by either the minor or his parents. In consideration of this release and the allotment made by insured the Government agreed to accept and deduct the allotment of a part of the minor's pay for the monthly premiums, as authorized by said Section 202, *supra,* and to keep the insurance in force during his minority service. This was reasonable, and, after observing and complying therewith for eighteen months, the Government could not rescind nor repudiate its contract. The findings of the trial court are conclusive as to these facts, said Section 202 of the War Risk Insurance Act provides for the allotment under said contract and the agreement to keep the insurance in force is not prohibited by Section 161 U. S. C. 34 *or any other law.*

The common law did not enable a minor or his parents to secure his release because of his minority, but, since the enactment of Section 161 U. S. C. 34, and Section 203 U. S. C. 34, every decision of this and other Federal courts has recognized the parent's right to release, making exceptions only when they had given consent or the minor had committed some offense punishable by court martial.

> "No minor under the age of fourteen years shall be enlisted in the naval service; and minors between the age of fourteen and eighteen years shall not be enlisted for the naval service without the consent of their parents or guardian." Section 161, title 34, U. S. C. A.
>
> "Upon the presentation of satisfactory evidence as to his age, and upon application for discharge by his parent or guardian presented to the Secretary within sixty days after the date of his enlistment, any man enlisted in the naval service, including the Marine

> Corps, under twenty-one years of age, who was enlisted without the written consent of his parent or guarian, if any, shall be discharged for his own convenience." 203 U. S. C. 34.

This statute was in force during all this time.

In re Marrissey (1890) 137 U. S. 157, 159, in interpreting this statute this court said:

> "But this provision is for the benefit of the parent or guardian. It means simply that the Government will not disturb the control of parent or guardian over his or her child without consent. It gives the right to such parent or guardian to invoke the aid of the court and secure the restoration of a minor to his or her control; but it gives no privilege to the minor."

This interpretation of this law stood undisturbed when this mother released and consented to the enlistment of her son, under a written promise by both the son and the Government that this contract would be observed. Can the Government now break faith with her? This interpretation specifically holds the minor cannot break faith with his Government, and, isn't it but fair and logical to now hold he cannot break faith with his mother?

The Government contends and the opinion herein holds the contract of the insured and insurer to continue the insurance in force during minority was not within the scope of the authority of the Secretary of the Navy, who acted through the recruiting officer, and therefore was not permissible nor binding on the United States.

We submit there is no law or regulation prohibiting it, and, every obligation of the entire transaction is legal and in harmony with the whole scheme of enlisting minors under the age of eighteen and the insurance protection of sailors and soldiers. Why should it not be permissible, "where it can be done without endangering any public interest", is not prohibited by any law and has been ratified and accepted by all government agencies dealing with it?

The law provides that an insured may change the beneficiary and the decisions hold he cannot make a contract contrary to this law, but, *there is no law that prevents him from contracting to continue his insurance in force during his minority.*

> "White's mother's interest at his death *was vested only so far as he and the Government had made it so and was subject to any conditions upon which they might agree.*" (Our italics.) *White* v. *United States*, 276 U. S. 175.

A regulation provides he may cancel his insurance, but, since the regulations are within the discretion of the Veterans' Administration, it may be waived or modified by the same authority who made it. The findings are conclusive that this regulation was waived and modified, all of which was approved, in the subsequent enlistment by the Secretary of Navy and in the subsequent issue of the policy and deduction of premiums for eighteen months by the Veterans' Administration.

We submit to forfeit this insurance under these facts is out of harmony with the spirit and whole scheme of veteran's insurance, is not required by any law and is contrary to the decisions of this and all other courts in construing the Government insurance laws.

The United States Government is one individual, of many departments, and the knowledge of a department is the knowledge of the United States. The consent of parents was filed in the Navy department where is remained and possibly was unknown to the Veterans' Administration until the beneficiary made claim for her insurance. This may account for this most unfortunate situation, but it was beyond the control of the beneficiary, and she should not be made the victim thereof.

With the legal knowledge of this agreement for eighteen months the Government accepted and carried out the con-

tract in all its terms and is now estopped to deny its validity.

> "A strong circumstance in favor of this conclusion is the fact that Sato's official acts as commissioner, in this case, were never repudiated by the Government; on the contrary his protocol was received and deposited in the public archives, where it still remains. His official acts, accepted and acquiesced in by the government, must be considered as valid, even if done by him only as a commissioner *de facto.*" *Gonzales* v. *Ross* (1887) 120 U. S. 605-630; 30 L. Ed. 801-810.

> "If it (the Government) comes down from its position of sovereignty, and enters the domain of commerce, it submits itself to the same laws that govern individuals there. * * * But it is insisted on the part of the Government, that as the Act of April 12, 1866, 14 Stat. at L. 31, only authorized the Secretary of the Treasury to retire, before their maturity, notes 'issued' under the authority of some Act of Congress, he could only take up such as were actually put out by the 'physical act' of some authorized officer of the Government in pursuance of law. This, we think, is too narrow a construction of the Act." *Cooke* v. *U. S.* (1875) 91 U. S. 389-405, 23 L. Ed. 237-245.

In the case of *United States* v. *The Thekla* (1924) 266 U. S. 328, 339-340, 341, 45 S. Court 112, 113, 69 L. Ed. 313, this court defined the rule to be followed in cases involving liability of the U. S. Government, and approved and quoted the same on March 29, 1937 in the case of *American Propeller and Manufacturing Company* v. *United States,* (not yet in reports) in determining the liability of the United States for an oligation for which the trial court "could find no authority."

> " 'The absence of legal liability in a case where but for sovereignty it would be liable does not destroy the justice of the claim against it. * * * The reasons are strong for not obstructing the application of natural justice against the Government by techanical formulas when justice can be done without endangering any public interest.' If the principle thus stated is

not strictly applicable, it at least suggests that the court should not affirm what is clearly an unjust and inequitable result unless under plain compulsion of law."

If the decision as it now stands in the case at bar does not overrule the decisions in the two last cited cases, it certainly suggests the abandonment or modification of the rule therein laid down, which was the rule followed by the trial court and Circuit Court in their decisions in this case.

Can there be a stronger appeal "for not obstructing the application of natural justice!" than the case at bar? This mother gave her only son to the service of his country under a written contract "where but for sovereignty it would be liable". The trial court and Circuit Court of Appeals could "find no authority" for "obstructing natural justice" and "the inequity" of avoiding this contract under these findings, "is so gross as to be shocking." (See *American Propeller Company* v. *United States, supra.*)

The trial court, the Circuit Court of Appeals and the Government's attorneys have been unable to find any law that compels or justifies this inequitable result and if this petition is granted there will be no authority for it.

Wherefore, respondent most respectfully prays that she be granted a rehearing and that the decisions of the trial and Circuit Court of Appeals be affirmed.

Respectfully submitted,

FRANK C. WADE,
Attorney for Respondent.

CERTIFICATE OF COUNSEL.

I, Frank C. Wade, hereby certify that I am the solicitor and counsel for Angie Crook Williams, Respondent, in the above entitled action, and that the foregoing petition for rehearing is not presented for purposes of delay or vexation, but is in our opinion well founded in law and fact and proper to be filed herein.

Frank C. Wade.

Subscribed and sworn to before me, a Notary Public, in and for the County of Vigo, State of Indiana, this 24th day of November, 1937.

Harvey Caldwell.
(*Notary Public.*)

My commission expires February 14, 1938.

SUPREME COURT OF THE UNITED STATES.

No. 11.—October Term, 1937.

The United States of America, Petitioner, *vs.* Angie Crook Williams.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 8, 1937.]

Mr. Justice Butler delivered the opinion of the Court.

Respondent brought this suit in the federal court for the northern district of Illinois to recover war risk insurance on the life of her minor son, Benson Charles Williams, who died while serving in the navy. Trial by jury having been waived, the court made findings of fact, stated its conclusions of law and gave judgment for the plaintiff. The Circuit Court of Appeals affirmed. 86 F. (2d) 746.

The findings show: Plaintiff's son was born August 27, 1901, and January 13, 1919, enlisted in the navy for the period of his minority. At that time defendant issued a certificate of term insurance binding itself, in case of his death while insured, to pay plaintiff $10,000 in 240 equal monthly installments; he directed defendant to deduct premiums from his pay; his parents executed a writing by which they consented to the enlistment, released their claim to his pay, approved the transactions between him and defendant and declared that their consent was given on the condition that, during enlistment, he would carry war risk insurance in the sum of $10,000 in behalf of his mother. July 20, 1920, he made written request that his insurance be terminated. Thereafter, defendant made no deductions from his pay on account of premiums. The insured died June 30, 1921. At all times until his death his uncollected pay was more than enough to keep the insurance in force. Upon learning of her son's death plaintiff demanded payment of the insurance. When notified by defendant of her son's cancelation she repudiated it, offered to pay all premiums, reiterated

her claim as beneficiary and, defendant having rejected it, brought this suit.

The Circuit Court of Appeals reasoned as follows: Plaintiff's consent was essential to the enlistment and was given on condition that the insurance be maintained. The minor and defendant could not set the condition at naught. Defendant could not avail itself of his services, to which it was entitled only if his mother so agreed, and ignore the condition upon which the agreement was obtained. Defendant was charged with notice of plaintiff's interest as beneficiary and, the cancelation not having been ratified by her, defendant was bound to collect the premiums and maintain the insurance by deductions from the pay of the insured. On that basis the court concluded that the insurance remained in force and that plaintiff is entitled to recover.

The opinion strongly puts the considerations that make in favor of plaintiff's claim but neglects the distinction between private employment of minors and their service in army or navy and fails to give effect to the law applicable to contracts of enlistment and to the terms upon which the government granted the war risk insurance here in question. In virtue of its power to raise and support armies, to provide and maintain a navy and to make rules for the government of land and naval forces, the Congress may require military service of adults and minors alike.[1] The power of the United States may be exerted to supersede parents' control and their right to have the services of minor sons who are wanted and fit for military service.[2] And the Congress may confer upon minors the privilege of serving in land or naval forces, authorize them to enlist, or draft them upon such terms as it may deem expedient and just.[3]

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[1] Tarble's Case (1871) 13 Wall. 397, 408. In re Grimley (1890) 137 U. S. 147, 153. Selective Draft Law Cases (1918) 245 U. S. 366, 377-378, 386. Hamilton *v.* Regents (1934) 293 U. S. 245, 262-264. United States *v.* Blakeney (1847) 3 Gratt. 405, 408. Lanahan *v.* Birge (1862) 30 Conn. 438.

[2] United States *v.* Bainbridge (1816) Fed. Cas. No. 14,497, p. 950, per Story, J. The Commonwealth *v.* Gamble (1824) 11 Serg. & R. 93, 94, per Gibson, J. Com. ex rel. Engle *v.* Morris (1852) 1 Phila. 381. In the matter of Beswick (1863) 25 How. Pr. 149, 151 Halliday *v.* Miller (1887) 29 W. Va. 424, 439.

[3] United States *v.* Bainbridge (1816) Fed. Cas. No. 14,497, p. 950. In re Riley (1867) Fed. Cas. No. 11,834, p. 797, per Blatchford, D. J. In re Davison (1884) 21 Fed. 618, 622. In re Cosenow (1889) 37 Fed. 668, 670, per Henry Billings Brown, D. J. United States *v.* Blakeney (1847) 3 Gratt. 405, 416. In re Gregg (1862) 15 Wis. 531, 532.

The statute under which plaintiff's son was accepted declares that minors between ages of 14 and 18 years shall not be enlisted in the navy without the consent of their parents.[4] It means that, while minors over 18 may enlist without parental permission, the government elects not to take those between 14 and 18 unless their parents are willing to have them go. It is a determination by Congress that minors over 14 have capacity to make contracts for service in the navy.[5] And it is in harmony with rulings under the common law to the effect that enlistment of a minor for military service is not voidable by him or his parents.[6] Enlistment is more than a contract; it effects a change of status.[7] It operates to emancipate minors at least to the extent that by enlistment they become bound to serve subject to rules governing enlisted men and entitled to have and freely to dispose of their pay.[8] Upon enlistment of plaintiff's son and until his death he became entirely subject to the control of the United States in respect of all things pertaining to or affecting his service.

The statute does not confer upon or leave with the parents any right to condition consent to their sons' enlistment. No Act of Congress permits enlistment of minors upon condition or upon the qualified consent of parents nor does any Act authorize recruiting officers to bind the United States to carry, or to require an enlisted man to carry, war risk insurance for his own protection or for the benefit of any person. It follows that defendant was not bound by the

[4] "No minor under the age of fourteen years shall be enlisted in the naval service; and minors between the age of fourteen and eighteen years shall not be enlisted for the naval service without the consent of their parents or guardians." 34 U. S. C., § 161. (See R. S., §§ 1419, 1420, as amended by Acts: May 12, 1879, 21 Stat. 3; February 23, 1881, § 2, 21 Stat. 338; August 22, 1912, § 2, 37 Stat. 356.)

[5] In re Morrissey (1890) 137 U. S. 157, 159. In re Davison (1884) 21 Fed. 618, 623. In re Gregg (1862) 15 Wis. 531, 533. United States *v.* Blakeney (1847) 3 Gratt. 405, 414-415. United States *v.* Bainbridge (1816) Fed. Cas. No. 14,497, p. 951.

[6] In re Morrissey (1890) 137 U. S. 157, 159. United States *v.* Blakeney (1847) 3 Gratt. 405, 413.

[7] In re Grimley (1890) 137 U. S. 147, 151. In re Morrissey (1890) 137 U. S. 157, 159.

[8] In re Morrissey (1890) 137 U. S. 157, 159-160. In re Miller (1902) 114 Fed. 838, 842-843. United States *v.* Reaves (1903) 126 Fed. 127, 130. United States *v.* Bainbridge (1816) Fed. Cas. No. 14,497. p. 951. Baker *v.* Baker (1868) 41 Vt. 55, 57. Halliday *v.* Miller (1887) 29 W. Va. 424, 439. Gapen *v.* Gapen (1895) 41 W. Va. 422, 425. Iroquois Iron Co. *v.* Industrial Com. (1920) 294 Ill. 106, 109, 1 Schouler, Domestic Relations (6th ed.) § 754, p. 820.

condition on which the trial court found that the parents consented to the enlistment of their minor son.[9]

War risk insurance was made available to those in active military service for the greater protection of themselves and their dependents.[10] By the insurance contract, of which applicable provisions of statutes and regulations constitute a part,[11] the insured minor was authorized to allot a part of his pay for the payment of premiums,[12] to change beneficiaries without their consent[13] and to cancel the insurance in whole or in part.[14] It follows that the cancelation was valid and plaintiff is not entitled to recover.[15]

Reversed.

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[9] Utah Power & Light Co. *v.* United States (1917) 243 U. S. 389, 408-409. Wilber Nat. Bank *v.* United States (1935) 294 U. S. 120, 123-124.

[10] War Risk Insurance Act of October 6, 1917, § 400, 40 Stat. 409.

[11] White *v.* United States (1926) 270 U. S. 175. Lynch *v.* United States (1934) 292 U. S. 571, 577.

[12] War Risk Insurance Act of October 6, 1917, § 202, 40 Stat. 403.

[13] *Id.*, § 402, 40 Stat. 409: "... Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries of such insurance without the consent of such beneficiary or beneficiaries, but only within the classes herein provided ..." Bulletin No. 1, promulgated October 15, 1917: "The insured may at any time, subject to the regulations of the bureau, change the beneficiary or beneficiaries to any person or persons within the classes permitted by the act, without the consent of the beneficiary or beneficiaries." Regulations and Procedure, U. S. Veterans' Bureau, 1928 (Washington, 1930) Part 2, pp. 1235, 1237.

[14] T. D. 48 W. R. provides: "The yearly renewable term insurance shall ... lapse and terminate ... (c) Upon written request ... to the Bureau ... for cancelation of the insurance, in whole or in part, and corresponding cessation or reduction of the payment of premiums ..." Regulations and Procedure, U. S. Veterans' Bureau, 1928 (Washington, 1930) Part 1, pp. 19-20.

[15] White *v.* United States (1926) 270 U. S. 175, 180. Von der Lippi-Lipski *v.* United States (1925) 4 F. (2d) 168, 169. United States *v.* Sterling (1926) 12 F. (2d) 921, 922. Lewis *v.* United States (1932) 56 F. (2d) 563, 564. Irons *v.* Smith (1933) 62 F. (2d) 644, 646.